

### **REMARKS/ARGUMENTS**

Reconsideration is respectfully requested of the Office Action of November 28, 2008.

A request for a two-month extension of time, along with the associated fee, is filed herewith.

By this response, Claims 21 and 24 have been cancelled. Claim 14 has been amended to incorporate the subject matter of Claim 21.

Therefore, reconsideration and entry of the claims, as amended, is respectfully requested.

#### **Amendment to the Specification**

This application has been amended to specify that it is a continuation-in-part of application no. 10/308,491, filed December 3, 2002, now US Patent 7,141,270, issued to Umicore AG & Co. KG, the same assignee as the present application. Both applications were pending together, disclose closely related subject matter and have two inventors in common.

#### **Rejection under 35 U.S.C. § 102(b)**

With the amendment of Claim 14 to include the subject matter of Claim 21, the rejection of Claims 14, 17 and 18 as anticipated by *Tabata*, US2002/0071980A1, is believed to be moot.

Likewise the rejections of Claims 15-17 under 35 U.S.C. § 103(a) in view of *Tabata*, taken with *Yamashita*, US 5,441,822 or *Kindler*, US 5,992,008, are believed to be moot.

#### **Rejections Under 35 U.S.C. § 102(e)**

The rejection of Claims, 14, 18 to 20, 22 and 23, under 35 U.S.C. § 102(e) as anticipated by *Wittpahl*, US 7,141,270 (assigned to the same assignee as herein) is traversed and reconsideration is respectfully requested.

Applicants respectfully submit that the claimed invention provides double-layer anode MEUs with high power density and reduced precious metal loading. See e.g. [0020] of the US publication. The advantages of the claimed invention are striking and unexpected. Specifically, the instant invention allows the anode layer to be made with high layer thickness, high catalyst loading and high porosity. See e.g. [0026] of the US publication. The double layer anode design allows catalyst layers to be thicker by a factor of 2 more than the cathode layer and catalyst loadings which are higher than, by a factor of 2.5, that on the cathode side. See e.g. [0027] of the US publication. These features lead to unexpected results, such as improved power density. See e.g. [0028] of the US publication. The double layer structure of the claimed invention also unexpectedly allows high design flexibility. See e.g. [0025] of the US publication.

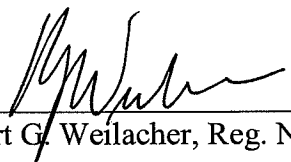
Applicants respectfully submit that *Wittpahl* '270 does not teach or suggest a process for manufacturing a MEU structure comprising a double layer anode or the unexpected advantages of such a MEU structure having a double layer anode. In addition, since the present application is a CIP of *Wittpahl* '270, applicants respectfully request withdrawal of the rejection.

A terminal disclaimer, together with the associated fee, is filed herewith.

Favorable action at the Examiner's earliest convenience is respectfully requested.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

By:   
Robert G. Weilacher, Reg. No. 20,531

Date: April 28, 2009  
Suite 3100, Promenade II  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3592  
Telephone: (404): 815-3593  
Facsimile: (404): 685-6893